

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 9-23 are rejected under the judicially created doctrine of double patenting over claims 1-10 of U.S. patent no. 6,686,403 since the claims, if allowed, will ⁱⁿ properly extend the "right to exclude" already granted in the patent, in the Examiner's opinion.

Claims 1-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. patent no. 6,686,403.

Also, claims 17-23 are objected to. In connection with the Examiner's objection to the claims, applicants have amended the claims correspondingly. It is therefore believed that the Examiner's grounds for the objection of claims 17-23 should be considered as no longer tenable and should be withdrawn.

In connection with the Examiner's rejection of claims 1-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. patent no. 6,686,403, a Terminal Disclaimer is submitted

herewith, which disclaims a part of the term of validity of a patent which can be issued on this application, subsequent to the term of validity of U.S. patent no. 6,686,403.

It is therefore believed that the Examiner's grounds for the rejection of the claims 1-31 under the judicially created doctrine of obviousness-type double patenting should be considered as no longer tenable and should be withdrawn.

Finally, in connection with the Examiner's rejection of claims 9-23 under the judicially created doctrine of double patenting over claims 1-10 of U.S. patent no. 6,686,403, it is respectfully submitted that this rejection should be based not on double patenting under 35 U.S.C. 101, but instead on double patenting obviousness type. Claim 9 of the present application is not identical to claim 1 of U.S. patent no. 6,686,403. The double patenting under 35 U.S.C. 101 is applicable only when the claims are identical with the exception of linguistic aspects. Definitely claim 9 of the present application is not different from claim 1 only in linguistic aspects. Instead, claim 9 has a completely different scope than claim 1 of U.S. patent no. 6,686,403 and claims a significantly different subject matter. Therefore, it is respectfully requested to withdraw the double patenting of statutory type under 35 U.S.C. 101, and instead to consider it as a double patenting of obviousness type which should be overcome by the attached Terminal Disclaimer.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-243-3818).

Respectfully submitted,

Ilya Zborovskiy
Agent for Applicant
Reg. No. 28563

